# STATE OF IOWA BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:

NO. 11-019

KARA HATLAND License No. 62798 RESPONDENT DIA NO. 12IBC003

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

On July 19, 2011, the lowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Kara Hatland, a licensed cosmetologist in the state of lowa. The Statement of Charges charged the Respondent with the five counts. Prior to hearing the State counsel dismissed three counts, and the hearing proceeded on two counts as follows:

Count I: Incompetence, in violation of Iowa Code sections 147.55, 157.9, and 645 IAC 65.2,(13), 65.2.

Count II: Negligence in the practice of cosmetology, in violation of lowa Code sections 147.55 and 157.9 and 645 IAC 65.2(13), 65.2(11).

This matter proceeded to a hearing on October 2, 2012 in the Lucas State Office Building, Fifth floor conference room, #526, Des Moines, Iowa. Assistant Attorney General David Van Compernolle appeared as counsel for the State interest. Respondent appeared with counsel, David A. Morse, and testified. The following Board members served as presiding officers for the hearing: Kimberly Page, Chairperson; Dana Atkins; Richard Mosley; Nicole Schultz; Mary Clausen; and Richard Sheriff. Administrative Law Judge Robert H. Wheeler assisted the Board in conducting the hearing. The hearing was open to the public, and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to lowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

## THE RECORD

The record includes the testimony of:

Department of Inspections and Appeals Investigator Tamara Adams;

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Lindsay Schany;

C W W

D W

Jack Moreland; and

Respondent, Kara Hatland.

State's exhibits A through F and Respondent's exhibit 1 entered the record.

#### FINDINGS OF FACT

Respondent Kara Hatland holds Iowa cosmetology license no. 62798, which expires March 31, 2013. On July 22, 2010, the Respondent worked as a licensed cosmetologist at Hair Diva Salon in Estherville, Iowa (Exhibit B; Hatland testimony)

On July 22, 2010, sisters Dana and Quantum Was, ages 14 and 17, made appointments for highlighting services at Hair Diva Salon. The Respondent performed services for D The highlighting process began with a brief consultation with the client to determine the desired results. The Respondent testified that Desired simply stated that she wanted more highlights than her previous treatment at another salon. The Respondent did a comb through for Design's hair, noting that the hair was thick and curly. She used a wide toothed comb. Wan, seated in an adjacent chair, described the comb through as "picked roughly through the hair." Described the Respondent "tugging hard" on her hair. The Respondent then sectioned Dan's hair into five areas with clips, and went to a different area to mix the lightening product in another room. The Respondent used a Matrix Colorgraphics product which is not intended to touch the scalp and must be rinsed thoroughly. The Respondent returned and applied the product onto the hair with foils placed to prevent the product chemicals from contact with the scalp and non-highlighted hair. This application process took approximately one hour, and the Respondent had to stop and mix more of the lightening product before completion. Comment noticed a lot of foils in Decem's hair, and the Respondent testified that she placed foil every half inch. Upon completion of the application of the product and foils, the Respondent placed Design under a hair dryer set to medium heat in an adjoining room to activate and accelerate the process. The Respondent left Demounder the dryer for approximately five minutes while she tended to other business. The Respondent checked on Dana at that time and Dana stated that her head felt warm and was getting hotter. Destricted that the Respondent replied, "Well, you're under a dryer, so what do you expect?" The Respondent left again and Dans's head felt like it was on fire. Dans stated

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that she panicked and ducked out from under the dryer. Dem walked out to the main salon area and was crying. She felt the foils in her hair, and they were too hot to touch. O mouthing the words, "it's burning." The salon owner, Stacy Deruyter saw D and got the Respondent's attention. Ms. Deruyter told the Respondent and another stylist, Lindsay Ms. Deruyter told Investigator Adams that she saw that the foils were Schany, to help D expanded and puffy when Dame came out of the dryer, and were standing up rather than lying next to the head. Stylist Lindsay Schany described the foils on Dan's head as "standing out straight" in an abnormal fashion. The foils in that condition may not prevent the chemicals from reaching the scalp. Ms. Schany saw Death crying hard. The Respondent and Ms. Schany took Death to the wash area and began removing the foils and rinsing Death's hair. Ms. Schany testified that the foils were so hot that they burned her fingers as she removed them. Ms. Schany stated that this is also abnormal. The foils should have been merely warm. The Respondent shampooed and rinsed Daniel's hair and tried to comb through it. Ms. Schany described more than the usual amount of hair coming out in the comb. C of hair coming out and being tossed on the floor. Comme described The Respondent proceeded with a haircut. Descried throughout this period of time. Upon contacted their mother, who examined Dama and saw leaving the salon, Dean and C pink skin on her scalp. Mrs. Watereturned to the salon with Dans, and Ms. Deruyter told her that she knew the Respondent did something wrong when she saw the foils puffed out when came out of the dryer. (Exhibit B; T. Adams, L. Schany, C. W. D. W., K. Hatland testimony).

A week passed and Mrs. We noticed the severity of the burns on Dean's scalp. The family sought medical attention resulting in a diagnosis of severe chemical burns. The burned area required a skin graft, and plastic surgery to restore hair growth to the affected area. More surgery may be necessary, as three to four small areas remain that will not support hair growth. The family brought the present complaint to the Board. (Exhibits B, D; Adams, D. Westerstimony).

Jack L. Moreland is a salon owner with forty two years of experience. Mr. Moreland is a former member of the Iowa Board of Cosmetology Arts and Sciences. He is a licensed cosmetologist and a licensed cosmetology instructor. He taught at the Iowa School of Beauty. At the State's request, Mr. Moreland reviewed the investigative reports in this case and the manufacturer's instructions for the lightening product. Mr. Moreland testified that the particular product used in this case can burn the skin, and therefore cannot be allowed 'touch the scalp. Product application should remain one quarter to one half inch from the scalp. In a situation involving a lot of foils, packed in tight, the application of heat will cause expansion and the chemicals can leak to the scalp. For that reason a client's expression of discomfort must be addressed immediately. A burning sensation can mean that the chemicals have leaked to the scalp. Although the Respondent's rinse and shampoo in reaction to December 1997 and crying was appropriate, she did so only when alerted by other staff. The Respondent did not respond

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appropriately when Define first complained of her scalp heating up under the dryer. Mr. Moreland felt that it was very important to check on the client upon any discomfort. Mr. Moreland noted that the licensing process serves to protect the safety of the public. (J. Moreland testimony).

The Respondent testified that she had been licensed since her graduation from cosmetology school in 2004. As of July 22, 2010, she had been working for over five years at Hair Diva salon. On that date the Respondent provided highlighting services to D W. The Respondent stated that she followed her usual procedures and is very familiar with the product. She did a comb through, mixed the product and applied the product with foils every half inch. The application looked to be proper, and she placed Dame under the dryer. The Respondent said that she then left the room, used the restroom and cleaned up her area. Five to seven minutes later she checked on Dean. The Respondent stated that the foils looked good and Dean said that she was "O.K." She then went to the reception area until others alerted her to Da leaving the dryer crying. She saw Dent over crying and stating "It's burning." The Respondent took Dear to the wash area with Ms. Schany's help, and removed the foils. The Respondent noted that he foils on the top of Dans's head were very hot. She did not observe any scalp burning. The Respondent testified that, prior to leaving the dryer, Demandant complained of the heat on her head. After the shampoo and rinse, the Respondent used a stav in conditioner and combed out Dem's hair and performed a cut. At that time she saw two pink spots on Dem's scalp that were nickel to quarter sized. The Respondent did not believe that these were chemical burns, but thought that the foils had been too hot. The Respondent was later terminated from the salon, and now works with former colleagues in her own salon. The Respondent stated that she did everything according to her training and standard procedures on July 22, 2010. (Exhibit 1; K. Hatland testimony).

## **CONCLUSIONS OF LAW**

The Board is authorized to impose disciplinary sanctions on licensees for violations of Iowa Code chapters 147, 157, or the rules promulgated by the Board. Iowa Code sections 147.55(9); 157.9; and 645 IAC 65.2(13).

## Count 1: Incompetence

The legislature has authorized the Board to prescribe rules for salons and schools of cosmetology arts and sciences. The Board has promulgated rules on grounds for discipline at 645 IAC 65.2.

645 IAC 65.2(2) defines professional incompetency as follows:

Professional incompetency includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other licensees in the state of lowa acting in the same or similar circumstances;
- c. A failure to exercise the degree of care which is ordinarily exercised by the average licensee acting in the same or similar circumstances;
- d. Failure to conform to the minimal standard of acceptable and prevailing practice in this state.

The Board finds that a preponderance of the evidence established that the Respondent violated sub paragraph (d) of the rule. As stated by Mr. Moreland, and the manufacturer's instructions, the product used in this case, Matrix Colorgraphics, may not come into contact with the scalp of the client. The diagnosis of a severe chemical burn indicates clearly that the chemicals did contact D Was 's scalp, causing serious injuries. Mr. Moreland testified that any expression of discomfort by a client in this situation indicates that the chemical may have leaked onto the scalp, and must be addressed immediately. The Board finds that this procedure represents the minimal standard of acceptable and prevailing practice in this state. Death Will first expressed her discomfort with the burning on her head when the Respondent first checked on D under the dryer. At that time the Respondent attributed the discomfort to the dryer's heat, and left Dame under the dryer for more time, unattended. It should be noted that the Respondent testified that D did not express discomfort to her at that time. The Respondent stated that Daniel said she was O.K., while Daniel testified that she expressed concern about the heat. The Board finds Dail's testimony more credible due to the witnesses' demeanor, the consistency of D 's testimony with other evidence in the case, and the fact that D does not have the Respondent's interest in the outcome of the license disciplinary proceeding.

# Count II: Negligence in the practice of the profession

645 IAC 65.2(11) defines negligence in the practice of the profession as follows:

Negligence in the practice of the profession includes a failure to exercise due care, including improper delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair a practitioner's ability to safely and skillfully practice the profession.

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The Board finds that a preponderance of the evidence established that the Respondent violated the rule by failing to exercise due care based on the conduct described above regarding count one. Due care in this situation would have involved the immediate investigation of the foils and the client's scalp upon the first expression of discomfort. As Ms. Deruyter told the investigator, she knew that the Respondent did something wrong when she saw the foils sticking out from Deruy's head. Mr. Moreland stated that the purpose of the licensing system is the protection of the public safety. Highlighting should not result in serious injury. In this case it did, and the stylist bears responsibility.

#### Sanction

Having found that the Respondent violated the above cited rules, the Board may impose sanctions. The Board considered:

The relative seriousness of the violations relative to a high standard of professional care for the citizens of lowa;

The facts of this case;

Any extenuating facts or countervalling considerations;

The existence of any prior violations, and if any, the seriousness thereof;

Any remedial action taken;

Any other factors regarding the competency, ethical standards and professional conduct of the Respondent.

The Respondent's violations were serious and directly affected the health, safety, and welfare of the client. Description was suffered severe chemical burns. Upon discovery of the problem, the Respondent took appropriate remedial action to attempt to remove the chemicals. The Respondent had practiced cosmetology for six years prior to this incident and two years since this incident without violations or complaints. Therefore, the Respondent has not had the benefit of prior Board remedial action, and appears otherwise willing to practice the profession within state statutes and regulations.

## **DECISION AND ORDER**

IT IS THEREFORE ORDERED that, pursuant to lowa Code 272C and 645 IAC 65.4, license number 62798, issued to Respondent Kara Hatland, is hereby placed on probation, effective immediately upon service of this Decision and Order, for a period of two years.

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IT IS FURTHER ORDERED that Respondent Kara Hatland, as a condition of probation, must complete 40 hours of education as follows:

The Respondent will report to Rick Mosley Hair once per week for an 8 hour day of instruction for 5 consecutive weeks (not available on Thursdays);

The Respondent will participate in instruction in color theory, shampooing, blow drying, and serving clients, by observing and working with an instructor on clients and mannequins;

The Respondent must wear all black attire with hair and makeup to professional hairdresser standards;

The Respondent must pay a fee of \$50.00 per day for the instruction.

IT IS FURTHER ORDERED that Respondent Kara Hatland pay a civil penalty of \$1,000.00.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$412.50 for the court reporter fees. The total fees of \$1,487.50 shall be paid within thirty (30) days of receipt of this decision.

Dated this 29<sup>TH</sup> day of October, 2012.

Kimberly Page, Chairperson

Iowa Board of Cosmetology Arts & Sciences

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

cc: David VanCompernolle, Assistant Attorney General